

LAW & MOTION, CIVIL CALENDAR

RULINGS

TIME: 9:00 A.M.

DATE: SEPTEMBER 9, 1994

DEPT: 1

JUDGE: GARY W. THOMAS

REPORTER: E. PASSARIS

CLERK: J. BENASSINI

CASE NO: 157680

TITLE OF ACTION: CHURCH OF SCIENTOLOGY V. ARMSTRONG

8) FIRST, HIS ATTEMPT TO SHOW A VIOLATION OF A PROTECTIVE ORDER IS NOT SUFFICIENT IN THAT IT DOES NOT SHOW ANY EFFORTS BY CHURCH TO "ACCOMPLISH[] ...AN IMPROPER PURPOSE" OR TO "OBTAIN AN UNJUSTIFIABLE COLLATERAL ADVANTAGE" (I.E., NO "USE" OF THE DISCOVERY DOCUMENTS). (YOUNGER V. SOLOMON (1974) 38 CAL.APP.3D 289, 297.) SECOND, HIS EVIDENCE REGARDING THE DOCUMENT TITLED "WHO IS GERALD ARMSTRONG?" IS NOT SUFFICIENT IN THAT IT DOES NOT SHOW THAT ANY STATEMENT IN THAT DOCUMENT WAS BASED ON HIS PERSONAL FINANCIAL INFORMATION. IN FACT, EVERY STATEMENT IN THE DOCUMENT WAS CONTAINED IN CHURCH'S ORIGINAL COMPLAINT. (COMPARE EX. 1N, P. 4 WITH COMPLAINT ¶¶ 2 AND 39.)

ARMSTRONG'S MOTION FOR SUMMARY JUDGMENT/ADJUDICATION

ARMSTRONG'S MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, SUMMARY ADJUDICATION ON CHURCH'S COMPLAINT IS DENIED. FIRST, CHURCH BRINGS THIS ACTION UNDER CIVIL CODE SECTION 3439.04, NOT 3439.05 (SEE COMPLAINT ¶¶ 29-31, 36-38); THUS, PROOF OF INSOLVENCY IS NOT REQUIRED. SECOND, THE TRUTH OR FALSITY OF ARMSTRONG'S RELIGIOUS BELIEFS ARE NOT RELEVANT IN DETERMINING, FOR EXAMPLE, WHETHER ARMSTRONG RECEIVED "REASONABLY EQUIVALENT" CONSIDERATION AND WHETHER HE KNEW OR SHOULD HAVE KNOWN HE WOULD INCUR A DEBT TO CHURCH BEYOND HIS ABILITY TO PAY. (§ 3439.04, SUBD. (b).) THIRD, THIS ACTION DOES NOT REQUIRE THE COURT TO ESTABLISH ANY RELIGION. THE RELIGIOUS BELIEFS OF THE PARTIES ARE IRRELEVANT IN DETERMINING THE ISSUES IN THIS ACTION.

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HUB LAW OFFICES

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8) CHURCH OF SCIENTOLOGY'S MOTION FOR SUMMARY JUDGMENT

THE MOTION OF PLAINTIFF/CROSS-DEFENDANT CHURCH OF SCIENTOLOGY ("CHURCH") FOR SUMMARY JUDGMENT ON THE CROSS-COMPLAINT OF GERALD ARMSTRONG ("ARMSTRONG") IS GRANTED.

ARMSTRONG FILED MANY OF HIS OPPOSITION PAPERS THREE DAYS LATE (DUE 8/26, FILED 8/29). THE COURT HAS CONSIDERED THE LATE FILED PAPERS. HOWEVER, ARMSTRONG SHALL PAY SANCTIONS IN THE AMOUNT OF \$49, PAYABLE TO THE CLERK OF THE COURT WITHIN 10 DAYS.

ARMSTRONG'S CLAIM BASED ON THE MISCAVIGE DECLARATION IS BARRED BY THE ABSOLUTE JUDICIAL PRIVILEGE OF CIVIL CODE SECTION 47, SUBDIVISION (b). THE DECLARATION WAS PROVIDED IN A JUDICIAL PROCEEDING. (SEE SECOND AMENDED CROSS-COMPLAINT, ¶69.) THE COMMUNICATION WAS MADE BY A PARTICIPANT AUTHORIZED BY LAW. (UNDISPUTED FACT 7.) CONTRARY TO ARMSTRONG'S ARGUMENT, THE COMMUNICATION WAS MADE "TO ACHIEVE THE OBJECTS OF THE LITIGATION" AND HAS "SOME CONNECTION OR LOGICAL RELATION TO THE ACTION." (SEE UNDISPUTED FACTS 4 AND 5.) ARMSTRONG ATTEMPTS TO RAISE A TRIABLE ISSUE BY SHOWING THAT THE MISCAVIGE DECLARATION WAS SUBMITTED IN CONNECTION WITH A DISCOVERY RELATED MATTER WHILE THE YOUNG DECLARATION WAS SUBMITTED IN CONNECTION WITH A SUMMARY JUDGMENT MOTION. THIS EVIDENCE IS NOT SUFFICIENT TO RAISE A TRIABLE ISSUE. FIRST, ARMSTRONG CITES NO EVIDENCE SHOWING THE CONTEXT IN WHICH YOUNG'S DECLARATION WAS SUBMITTED. SECOND, AND MORE IMPORTANTLY, "PROCEEDING" IS NOT LIMITED TO THE PARTICULAR ISSUE BEFORE THE COURT AT THAT MOMENT. (SEE RADER V. THRASHER (1972) 22 CAL.APP.3D 883, 889.) THE STATEMENTS BY MISCAVIGE GO TO ARMSTRONG'S MOTIVES AND CREDIBILITY IN TESTIFYING AS TO THE MATTERS SET FORTH IN THE NARRATIVE STATEMENT. (SEE UNDISPUTED FACT 5.) THUS, THERE IS "SOME CONNECTION" TO THE FISHMAN ACTION, AND BY ITS ACTION IN SUBMITTING THE DECLARATION, CHURCH IS CLEARLY TRYING TO ACHIEVE AN OBJECT OF THE LITIGATION BY HAVING THE TRIER OF FACT NOT BELIEVE ARMSTRONG.

ARMSTRONG'S CLAIM BASED ON MISUSE OF FINANCIAL RECORDS OBTAINED THROUGH DISCOVERY FAILS. CHURCH'S EVIDENCE SHOWS THAT IT USED THE FINANCIAL RECORDS ONLY TO PREPARE FOR TRIAL IN THIS ACTION. (FACT 17, CITING EXS. 3 AND 4.) ARMSTRONG'S EFFORTS TO RAISE A TRIABLE ISSUE FAIL.

(CONTINUED TO PAGE 7A-1)